

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MARK BROWN,

Plaintiff,

v.

NURSE GARCIA and NURSE HOWELL,

Defendants.

ORDER

Case No. 16-cv-775-jdp

On November 30, 2016, I entered an order in this case directing plaintiff to submit by December 21, 2016, an initial partial payment of the filing fee in the amount of \$23.02. Now plaintiff has filed an affidavit of special circumstances, dkt. #5, which I will construe as a motion to lower the initial partial filing fee.

In 28 U.S.C. § 1915, Congress has dictated the manner in which prisoners must pay the fees for filing federal lawsuits and appeals, and I have no discretion to modify this method. In calculating the amount of plaintiff's initial partial payment in this case, I used the trust fund account statement he submitted in support of his for leave to proceed without prepaying the fee. This statement showed that for the six-month period immediately preceding the filing of the complaint in this case, plaintiff had several deposits made to his account. Plaintiff's average monthly deposits for that time period to be \$115.08; twenty percent of that amount is \$23.02. Because this court is bound by the provisions of the Prison Litigation Reform Act and because it is clear plaintiff's initial partial payment was calculated correctly pursuant to these provisions, his motion to lower the amount of the \$23.02 initial partial filing fee in this is denied.

However, from plaintiff's affidavit, it is clear that he does not believe he can pay the \$23.02 payment from the funds currently available in his prison account. Because plaintiff

may be able to make the payment if he has more time, he may have three more weeks to pay the initial partial filing fee.

ORDER

IT IS ORDERED that:

1. Plaintiff's motion for the court to lower the initial partial payment in this case (dkt. #5) is DENIED.
2. Plaintiff may have an enlargement of time to January 10, 2017, in which to submit a check or money order payable to the clerk of court in the amount of \$23.02, or advise the court in writing why plaintiff is not able to submit the assessed amount on or before January 10, 2017.
3. If, by January 10, 2017, plaintiff fails to make the initial partial payment, or show cause for failure to do so, plaintiff will be held to have withdrawn this action voluntarily and the case will be closed without prejudice to plaintiff filing this case at a later date.

Entered this 20th day of December, 2016.

BY THE COURT:

/s/
PETER OPPENEER
Magistrate Judge